



Commission d'accès à l'information

Provisions on data portability

September 5, 2024

The Commission d'accès à l'information (CAI) will not be publishing an English version of a summary it published on Sept. 5, 2024, regarding legal provisions on data portability. Considering the interest of organizations and individuals throughout Canada for Québec's privacy legislation, BLG has made available this unofficial translation to facilitate understanding of these provisions. Readers should refer to this translation with care and review the original French version published by the CAI. In the event of a discrepancy between the original French version and this unofficial translation to English, the French version shall take precedence.

On Sept. 22, provisions on the portability of personal information will come into force. A part of the right to access, the right to portability allows any citizen to obtain the computerized personal information collected from them in a structured, commonly used, and technological format.

Learn more about:

- ✓ Citizens' rights
- ✓ Obligations of companies

Citizens' rights

Requesting your information in a technological format

You can request that a public body or a company provide your computerized personal information in a structured and commonly used technological format. However, this information must have been collected from you.

According to the [guidelines from the government of Québec](#), a format is considered “structured and commonly used” when commonly used software applications can easily recognize and extract the information contained within. This is stipulated by the *Act respecting access to documents held by public bodies and the protection of personal information* and the *Act respecting the protection of personal information in the private sector*.

Upon your request, this information can also be communicated, in the same format, to any person or entity authorized to collect your information.

This feature of your right to access your personal information, also known as the right to portability, aims to:

- Give you greater control over your personal information;
- Facilitate your efforts to obtain services from another public body or company.

Conditions for exercising the right to portability

To exercise your right to portability, the relevant personal information must be:

- **Computerized:** The right to portability applies only to computerized personal information, meaning information that is organized and structured using information technology.
- **Collected from you:** This computerized personal information **must have been collected directly or indirectly from you by a public body or a company**. Indirectly collected information includes data generated by your activities, such as your purchase history, travel records, driving habits, etc.

Please note that created or inferred information is excluded from the right to portability, as it was not collected directly or indirectly from you. Instead, it is generated by analysis, observation, or obtained through algorithms and correlations. For example, the risk level associated with an individual by their insurance company constitutes created or inferred personal information.

Likewise, computerized personal information obtained by a public body or a company from third parties is excluded from the right to portability.

How to request access to your computerized personal information

The procedure to exercise your right to portability is the same as for any request to access your personal information.

- Learn how to [access your computerized personal information](#).
- Know your [recourse options if you are dissatisfied](#).

When you make a request, the public body or company from whom you ask for your computerized personal information must [assess the necessity of receiving it by following the proposed procedure](#).

Serious practical difficulties

The communication of your personal information in a structured and commonly used technological format should not cause serious practical difficulties for the public body or organization.

The *Act respecting access to documents held by public bodies and the protection of personal information* and the *Act respecting the protection of personal information in the private sector* do not define what constitutes “serious practical difficulties.” The Commission’s jurisprudential interpretation of this expression refers to a case-by-case analysis. For example, the Commission has previously concluded that significant costs incurred in fulfilling a request, or the complexity required for the transfer due to the requester’s choice of format, may be considered “serious practical difficulties.”

Obligations of companies

Communicating information in a technological format

The right to portability allows any individual, upon request, to obtain their computerized personal information in a structured and commonly used technological format. However, this information must have been collected directly from the individual. According to the [guidelines from the government of Québec](#), a format is considered “structured and commonly used” when commonly used software applications can easily recognize and extract the information it contains.

Companies are required to ensure that any new project involving the acquisition, development, or overhaul of an information system or electronic service provision allows for the communication of computerized personal information in a structured and commonly used technological format.

This feature of the right to access personal information is intended to give individuals greater control over their personal information and to facilitate their efforts when seeking services from another company.

In this context, an individual can also request that their computerized personal information be communicated in a structured and commonly used technological format to an authorized person or company. To ensure the protection of personal information, any company that collects personal information, whether computerized or not, is required to [assess the necessity of receiving it by following the proposed procedure](#).

Currently, there is no legislative requirement that mandates companies to implement interoperable systems. However, interoperability is a crucial element for enabling the effective transfer of personal information and ensuring that individuals can fully benefit from the right to portability.

Conditions for exercising the right to portability

To exercise your right to portability, the relevant personal information must be:

- Computerized: The right to portability **applies only to computerized personal information, meaning information that is organized and structured using information technology.**
- Collected from the individual: This computerized personal information must have been collected **directly or indirectly from the individual by the company.** Indirectly collected information includes data generated by the individual's activities, such as their purchase history, travel records, driving habits, etc.

Please note that created or inferred information is excluded from the right to portability, as it was not collected directly or indirectly from you. Instead, it is generated by analysis, observation, or obtained through algorithms and correlations. For example, the risk level associated with an individual by their insurance company constitutes created or inferred personal information.

Likewise, computerized personal information obtained by a public body or a company from third parties is excluded from the right to portability.

Procedure for accessing computerized personal information

The procedure for responding to an individual's request to obtain their computerized personal information in a structured and commonly used technological format is the same as for any request for access and rectification. Notably, the deadline for responding to such a request is also 30 days.

If an individual is dissatisfied with the response to their request, they may appeal to the Commission by filing a request for a review of the disagreement.

Additionally, companies are required to take appropriate security measures when transmitting computerized personal information in a structured and commonly used technological format.

Serious practical difficulties

The communication of personal information in a structured and commonly used technological format should not cause serious practical difficulties for the company. The *Act respecting the protection of personal information in the private sector* do not define what constitutes "serious practical difficulties." The Commission's jurisprudential interpretation of this expression refers to a case-by-case analysis. For example, the Commission has previously concluded that significant costs incurred in fulfilling a request, or the complexity required for the transfer due to the requester's choice of format, may be considered "serious practical difficulties."

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